

COUNCIL MINUTES  
TIGARD CITY COUNCIL MEETING  
November 23, 2004

The meeting was called to order at 6:30 p.m. by Mayor Dirksen.

Council Present: Mayor Dirksen, Councilors Moore, Sherwood, Wilson (arrived at 6:33 p.m.), Woodruff

- STUDY SESSION

- > DISCUSS COUNCIL LAPTOPS/ISSUES

Mr. Monahan asked if Councilors had any problems with their laptop computers, they should let staff know so that IT staff could take the computers after the December 14 meeting until the January 11 Council meeting to make any needed upgrades.

- > CITIZEN COMMUNICATION FOLLOW-UP – Mr. Monahan reported on the following items that had been brought up during Citizen Communication:

- Status of Fred Fields' access across City land
- Bull Mountain Annexation – Mr. Monahan noted there was comments from Mr. Frewing about the City not dropping the Bull Mountain annexation, and did not feel he needed to comment on that, as he was asking Council to keep this in mind.
- Gretchen Buehner, Regarding Late Delivery of Cityscape - Mr. Monahan noted staff had commented about that last week.
- Lisa Hamilton-Treick comments about the Fifth Tuesday, open to public with Tigard related issues – Mr. Monahan stated there had been comment about whether non-city residents could speak. The concern was the focus of discussion should be on city business. The Council was not concerned about just talking about Bull Mountain as an example.

Mr. Moore stated he did not want to hear about things the City has no control over. Mayor Dirksen suggested if people begin to talk about those issues, we say the appropriate venue for that would be the Washington County Commission Chamber in Hillsboro.

- Mayor Dirksen stated he was interested in the issue about the light and crosswalk at the Library. There have been several letters to the editor in the

*Tigard Times*. This did not come up as part of Citizen Communication. He asked if this had been covered in *Cityscape* yet.

Mr. Monahan noted the Executive Staff did talk about the location not being at Omara, but at the north side of Wall Street.

\*Councilor Wilson arrived at 6:33 p.m.

- > CITY HALL CLOSED ON THURSDAY & FRIDAY
- > LIBRARY IS OPEN FRIDAY AND SATURDAY
- > NO NEWSLETTER THIS WEEK
- > SCHOOL SUPERINTENDENT RECRUITMENT PROCESS – Meet December 14 @ 6 OR 6:30 PM?

Mr. Monahan noted he was just asked this question. The existing school superintendent, Steve Lauer, will be moving back to California next spring. The School District is hiring a consultant to assist the Board to select a new superintendent. The question is whether the City Council as a group, or just a couple of members, would want to meet with the consultant to identify community issues the School District is faced with, what qualities are needed in a superintendent, and what are the challenges ahead. He suggested to Susan Stark-Hayden the consultant could meet with Council on December 14 at either 6 or 6:30 p.m. to receive Council's input. She had indicated this time fits into the consultant's schedule.

Council concurred to schedule the consultant at 6 p.m. for half an hour on December 14.

- > COUNCIL SCHEDULE FOR DECEMBER 2004 – Meetings on December 21 and 28 - Mr. Monahan stated he had asked Washington County Administrator whether the County Commissioners could meet with the Tigard Council on December 20, but he has not yet received a response back. December 20 has tentatively been scheduled for that meeting, pending confirmation with Washington County Administrator. The purpose of that meeting would be to discuss post annexation issues. Washington County Commissioners just held their strategic planning session and he felt it was important to hear their point of view before Council goes into its goal setting in January.

The Council concurred to eliminate the meeting on December 21 if the meeting on December 20 takes place, and also to cancel the regular business meeting on December 28, unless something very pressing comes up.

> RICHARD FRANZKE LETTER RE: BULL MOUNTAIN

Mr. Monahan briefly reviewed the contents of Mr. Franzke's letter in which Mr. Franzke offers to continue the discussion of annexation with Mayor Dirksen. The specific concerns Mr. Franzke has is to reduce the current zoning density and provide parks and open space. He suggested staff draft a letter for the Mayor's signature.

Councilor Woodruff stated the dialogue should continue. The Council is not cutting them off, but the ball is in the Bull Mountain community's court to come back at some point and tell us what they think will work relating to annexation.

Councilor Sherwood stated because the Bull Mountain area residents overwhelming rejected the Bull Mountain annexation, she did not feel the City should put too much energy into that area.

Councilor Moore noted Tigard does not have the resources to do their studies. Councilor Woodruff suggested that they come back and say what they would need and put a proposal in front of Council.

Mr. Monahan noted Council is just seeing the lengthy letter. He suggested Council look through it closely and give direction to staff and Mayor Dirksen on how to respond.

> ADMINISTRATIVE ITEMS

a. Calendar Review

November 25: Thanksgiving - City Hall Closed

November 26: City Hall Closed – LIBRARY OPEN

November 30: 5th Tuesday – Water District Auditorium/Lobby Conf. Rm –  
7:00 pm

December 1-4: National League of Cities Conference- Indianapolis

December 6: Cathy Wheatley returns!

December 14: City Council Business Meeting – 6:30 pm

December 21: City Council Workshop Meeting – 6:30 pm

December 24: City Hall Closed - LIBRARY OPEN

December 28: City Council Business Meeting – 6:30 pm

December 31: City Hall Closed – LIBRARY OPEN

> FOREST DEFERRAL AMENDMENT PROCESS

Dick Brewersdorff, Current Planning Manager, reviewed Jim Hendryx' memo and map showing the impacted areas. The properties under Forest Deferral are pretty much exempt from normal provisions. Properties do not have to get a tree removal permit unless they are in steep slopes or wetland areas, and in those cases, the main criteria are to file an erosion control plan. The maps indicates the number of tree deferral areas left in the city, and the urban planning area; seven are located inside the existing City limits and the others are in the urban planning area. Four properties are located outside the City are owned by people who will ultimately develop their land. The memo also points out that if Council decides to amend the code relative to Forest Deferral, it will only impact the areas inside the city, not the areas in the urban planning area in unincorporated Washington County, unless Washington County decides to implement the amendments as well, and Washington County basically looks at its codes once a year.

Mr. Brewersdorff noted Ballot Measure 37 is now the big issue to be faced. He discussed this issue with Gary Firestone, Deputy City Attorney, who indicated owners have a right to log their property because that is a permitted use in the County. If the City chooses to do something in the future, there will be a distinct possibility of a takings claim. Given the number of properties left, unless Council wanted staff to talk to all those property owners and see where they are headed, he would not recommend doing a code revision at this time. He reviewed the status of several of the properties he is aware of. Until all the issues under Ballot Measure 37 are resolved, which may take a couple of years, he believes everyone forgot about the benefits of land use planning restrictions.

Mayor Dirksen stated Mr. Brewersdorff thought process was parallel to his. If there were an opportunity to try to get rid of these within the city, it would make perfect sense. Until this whole issue arose as part of Measure 37, he was not aware there were any forest deferral areas within the city.

The Council concurred to let the issue of Forest Deferral to remain as is and not amend the code.

Mr. Brewersdorff stated in many instances, developers say they would like to save the trees, but the problems they are faced with in some subdivisions with steep slopes, rather than be hassled with where they put the tree protection fencing and quality issues that come about, it is easier to cut down the trees.

Councilor Moore noted in many instances, the trees were planted and the owners have spent a lifetime nurturing and watching them grow, all with the expectation of cutting and selling the timber at some time and using that income for their retirement.

Mr. Brewersdorff indicated the Tree Task Force spent about three years studying this issue where people had planted trees years ago for this purpose. Councilor Moore stated he was not interested in subsidizing a farmer for their trees.

Mr. Brewersdorff stated the City has only heard one side of the tree removal issue, and there are probably two other sides or more of this issue.

> COUNCIL TRAINING – CITY ATTORNEY

Mr. Monahan reviewed the list of possible training topics, and asked Council if they had a preference to the order. There are changes in State Law being implemented to the Public Contract Review Process on March 1, so Finance Director Craig Prosser will conduct that training of Council and the Budget Committee closer to the time the rules change.

Councilor Woodruff noted he would like a review of land use process. Council concurred this was the number one priority for training.

\*City Attorney Tim Ramis arrived at 6:53 p.m.

Following discussion on each topic, Council concurred to the following priority of training issues: 1) Land Use; 2) Meeting Procedure and Public Meetings Law; 3) Public Records and Records Retention, E-mail, Phone Records; 4) Personal and Municipal Liability.

Council discussed when the training would take place. It was agreed that some training would be added to Study Sessions. This option would not require additional cost by the City Attorney. Council could also schedule a longer period of time to discuss so Mr. Ramis could cover more subjects at one time.

Mr. Monahan noted the Planning Commission holds training on land use issues, which Councilors could also attend. Mr. Monahan asked if municipal powers could be blended with meeting procedure. Election law can wait. Maybe a session on Ethics could be a citywide session with Boards and Commissions. Funds were budgeted for training. He noted funds were budgeted in this year's budget for Council training.

EXECUTIVE SESSION: The Tigard City Council recessed into Executive Session at 6:56 p.m. to discuss Pending Litigation under ORS 192.660(2)(h). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the

purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

The Executive Session concluded at 7:30 p.m.

## BUSINESS MEETING

Mayor Dirksen called the City Council & Local Contract Review Board to order at 7:40 p.m.

Councilors Present: Mayor Dirksen, Councilors Moore, Sherwood, Wilson and Woodruff.

- 1.4 Council Communications & Liaison Reports
- 1.5 Call to Council and Staff for Non-Agenda Items

Mr. Monahan requested the addition of a resolution after item 6.

## 2. CITIZEN COMMUNICATION

Norman Russell, 8857 SW Edgewood Street, Tigard, stated he represents his local neighborhood, and read a letter into the record (Agenda Item No. 2, Exhibit #1) concerning possible multi-housing development of property at 8855 SW Edgewood Street, into three parcels, and the impacts on adjacent properties. He asked Council to consider the negative impact this type of development would create, which would also establish a precedent for a patchwork of development in the neighborhood.

Councilor Moore stated he was not familiar with the proposed project but asked if this had gone through the permit process.

Mr. Monahan asked Mr. Brewersdorff to report on the status of this proposal.

Mr. Russell noted a pre-application meeting was held March 4, 2004, but the application has now expired. The owner has moved out but has the property for sale and is being marketed to developers. Neighbors know of two different people trying to buy it for its current use, but the owner is distributing information through multiple listing a service indicating the property has been surveyed and able to be subdivided into smaller lots.

Dick Brewersdorff, Current Planning Manager, reviewed the process developers are required to follow, including a pre-application conference during which staff reviews the standards and rules, and holding a neighborhood meeting before a plan can be submitted. Depending on the method of development chosen, the plan is then reviewed by either the Planning Commission for planned developments, or to staff on subdivision proposals. There are specific requirements relating to streets, fire access, water service, drainage, erosion control, and a service provider letter is required from Clean Water Services.

Mayor Dirksen noted Clean Water Services and Tualatin Valley Fire & Rescue reviews all the applications and is required to sign off on them before any permits are issued. It is a long and involved process that any developer would have to go through, before something like that can move forward.

Mr. Russell stated the neighbors are not against anyone from making money, but there were some particular issues the neighborhood was concerned about protecting.

Mayor Dirksen noted he lived in the area and would be concerned about drainage issues as well.

Ed Duffield, 8859 SW Edgewood, noted he also lives in the same area and was concerned about the potential development.

### FOLLOW-UP TO CITIZEN COMMUNICATION

- Fields Property - Mr. Monahan noted regarding the access across City property to the property behind the library that Mr. Frewing mentioned last week, there has been considerable communication between the City Engineer and Mr. Fields, the property owner. There has not been any development application submitted. It was determined the property owner was going back there to do some analysis to determine where the flood plain lines are, and it is his understanding Mr. Fields has completed that project.
- Fifth Tuesday – Mr. Monahan noted Council would hold its first Fifth Tuesday Citizen Forum on November 30, in the Water Building auditorium, from 7 to 9 p.m. There was question whether those meetings would be open to the public for Tigard related issues. The Council's answer is that they will be there to hear citizen issues related to Tigard related issues, and Council wanted to focus on Tigard business. Notice has been sent out about that meeting.

### 3. CONSENT AGENDA

Rob Williams, president of the Youth Action Council, read the Consent items.

Upon motion of Commissioner Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda as follows:

- 3.1 Approve Council Minutes for October 26, 2004
- 3.2 Local Contract Review Board



- a. Amend Engineering Design Services Contract on Hall Blvd/Wall St Intersection Project
- b. Approve the Purchase of Three (3) Hybrid Vehicles for Building Division Use
- c. Approve the Purchase of Two (2) Half-Ton Pickups for Police Department

### 3.3 Intergovernmental Agreement for Towing Services

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes
Councilor Woodruff	-	Yes

\*Item No. 5 was taken out of turn at this time.

## 4. JOINT MEETING WITH STATE SENATOR and STATE REPRESENTATIVE

State Senator District 18, Ginny Burdick, and State Representative District No. 35, Larry Galizio, were present.

Senator Burdick noted Captain Bell wrote the first draft of a bill she introduced and then became an initiative to voters to require background checks at gunshows. Several issues she is concerned about include:

- Ballot Measure 37, and the impacts it has on local governments.
- She had closely watched the proposed Bull Mountain annexation to the City of Tigard. She will be proposing legislation to put cities within the Metro area on the same basis as other cities in the State, allowing a straight majority requirement to annex an area like Bull Mountain.

Representative Galizio stated he was excited about the upcoming session but hopes to attend occasional City of Tigard Council meetings to keep Council informed about what is going on in Salem. He is excited to work with Senator Burdick because she has a lot of institutional memory, is experienced and well respected throughout the State. His concerns include Measure 37, the State's budget, the "Do No Harm" legislation, unfunded mandates, and other policy decisions local governments have to deal with.

Councilor Moore said he would like to hear what goals and concerns Senator Burdick and Representative Galizio have, and what is on their priority list.

Senator Burdick noted her challenging issues would be:

- Implementation of Ballot Measure 37, which might possibly come before the Legislature. She explained she did not believe the Legislature can or should do much to Ballot Measure 37 because of the 60/40 margin it was approved by, and any changes would need the support of the proponents.
- Educational funding will continue to be a huge issue because there is a billion dollar shortfall. Education is a huge part of the budget, so she is worried how education will fare during the session. She noted voters of the Tigard/Tualatin School District approved the renewal of the local option even given what she felt was a misleading ballot title, because it looked like a new tax.
- She hoped to continue as chair of the Judiciary Committee, and hope to use that to deal with many problems. That Committee will need to deal with the huge methamphetamine epidemic in Oregon. She noted many property crimes are due to that problem.
- Interpretation on the vote of the gay marriage issue, which will be a thorny issue to figure out which direction to go with that.

Senator Burdick noted that with Measure 37, the legislature has several options:

- Just let it go into effect and see what the local governments handle it. Local governments already are taking different positions. One jurisdiction adopted an ordinance allowing property owners to sue if a property owner gets Measure 37 waivers they don't like.
- Send it through either the Judiciary Committee or a Land Use Committee, or set up a special committee to deal with this. Max Williams will be missed because he headed up a special committee to deal with Measure 7. Many policy issues will be overshadowed by the budget constraints.

Senator Burdick stated she would continue to push her bill to allow school boards to keep guns out of schools, even if people have concealed licenses. It will be a difficult bill to pass because of the power of the gun lobby, and also because people already feel it is the law. There is a loophole, which she intends to deal with.

Representative Galizio stated he concurred with Senator Burdick. One thing he heard over and over was that people are tired of partisan bickering. A major goal of his and other freshman legislators is not to have several special sessions. He feels a legislature that understands there are difficult issues, but legislators need to listen to others and collaborate and negotiate with others. This is something he wants to help to reach difficult decisions.

Senator Burdick concurred there needs to be cooperation by all the members of each house. She noted for the first time ever, the Senate Democrats agreed their caucus meetings would follow the requirements of the Public Meeting Law, including notice and being open to the public.

Councilor Moore stated Salem has credibility problems and a historic lack of effectiveness by not getting things done. One thing he would like to see is return of school funding to the school boards. There is a lack of funding that Tigard is used to. While the local school tax option passed, there is still a need to return that control to the local level. He hopes that something can be done about this. Mayor Dirksen noted he concurred because the school funding is a burden that has been placed on the State.

Senator Burdick stated this issue was a reverse mandate by the voters. The State approves mandates to local governments all the time, but the voters did it to the State this time by giving responsibility for schools to the Legislature and not adding a dime in additional revenue in which to handle this huge issue.

Senator Burdick advised local governments to contact Oregonians in Action, to request their support to change the law under Ballot Measure 37. With a 60/40 margin of approval, any changes will require to have the support of the proponents. If the proponents are not supportive of any change, there is not much the Legislature can do until at least some time has gone by. The Legislature found that out when voters approved the Medical Marijuana and Death with Dignity ballot measures.

Councilor Woodruff stated he appreciated Senator Burdick mentioning she will be looking at the annexation issue and trying to clarify the statutes that conflict with each other. He hoped there would be a public hearing on that issue to allow people with different points of view to air their perspective. There are many views, and hope a decision is made that will be fair to everyone.

Representative Galizio stated he looks forward to working with Tigard City Council.

Councilor Woodruff noted Council meets at regular times each month, and hoped Senator Burdick and Representative Galizio could come to some of those meetings to present updates.

## 5. SWEARING IN OF NEW POLICE CAPTAIN MICHAEL BELL

Chief of Police, William Dickinson, noted Captain Michael Bell worked for the City of Portland for 23 years and seven years for Lane County. He then gave the oath of office to Captain Bell.

Captain Bell introduced members of his family, and was congratulated by Mayor Dirksen and the Councilors.

6. FORMAL GRADUATION OF TIGARD'S COMMUNITY EMERGENCY RESPONSE TEAM (CERT) VOLUNTEER PROGRAM CLASS II

Dennis Koellermeier, Public Works Director, presented the staff report, and then introduced Mike Lueck, the EOC commander.

Mr. Lueck reviewed the CERT training program, and then introduced each of the Graduates, and presented certificates and pins. The following graduated from the second session: Donna Hammersly, Cindy Eng, Loel Strong, Judy Baxter, Ann Anderson, Louise King, Linda Soto, Scott Peterson, Brady Minthorne, Phil Wentz, Jennifer Glaser, Irene Finch, Phil Westover, and Ted Baxter.

Councilor Moore asked if there was going to be any on-going training for CERT graduates. Mr. Lueck explained Tualatin Valley Fire and Rescue (TVF & R) provides the funding for the initial training of 24 hours of training for eight weeks. TVF & R is planning to provide additional training through the year for enhanced training in fire and patient extraction in cooperation with the City of Beaverton's training program.

6B - RESOLUTION – ACKNOWLEDGING THE VALUABLE SERVICE OF JANE MCGARVIN, DEPUTY CITY RECORDER

Mayor Dirksen read the resolution, and presented Ms. McGarvin with certificates, pins and a potted plant.

Upon motion of Councilor Sherwood, seconded by Councilor Wilson, and unanimously to approve RESOLUTION 04-90, A RESOLUTION OF THE TIGARD CITY COUNCIL ACKNOWLEDGING THE VALUABLE SERVICE RENDERED BY JANE MCGARVIN AS DEPUTY CITY RECORDER, FROM JUNE 2004 TO DECEMBER 2004.

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes
Councilor Woodruff	-	Yes

7. PUBLIC HEARING (INFORMATIONAL) – CONSIDER RESOLUTION FORMING  
SANITARY SEWER REIMBURSEMENT DISTRICT NO. 32 (Fern Street)

Gus Duenas, City Engineer, stated one property owner had signed up to speak. He spoke with that property owner before this hearing who told him that his property was already hooked up to sewer. Because this project was going to be part of the MSTIP-3 project to be constructed in the spring, there is time to research this concern. He would recommend that instead of proceeding with this project at this time, the project be withdrawn in order for staff to investigate the property owner's concern. If staff finds that the property is already hooked to the sewer, then staff will revise the Engineer's report to spread the cost of the project over the rest of the properties. This would provide correct notice of the estimated to the property owners before the project is begun, rather than at the end. The property owner indicated his home had sewer that is served from the rear of the property, rather than the normal front access. He did not know why the consultant was not aware this property was already connected to the sewer.

This item was then officially withdrawn from the agenda.

8. PUBLIC HEARING (INFORMATIONAL) – CONSIDER RESOLUTION FORMING  
SANITARY SEWER REIMBURSEMENT DISTRICT NO. 33 (Walnut Street)

- a. Mayor Dirksen opened the Public Hearing.
- b. Mr. Duenas presented the staff report, which included a PowerPoint presentation (Agenda Item No. 8, Exhibit #1, copy on file with the City Recorder). Mr. Duenas reviewed the elements of the incentive program for property owners to hook up sewer after the project is complete and accepted.
- c. Public Testimony – None.
- d. Staff Recommendation – Mr. Duenas indicated the staff's recommendation is to approve the resolution initiating the formation of the Sanitary Sewer Reimbursement District No. 33 (Walnut Street).
- e. Council Discussion

Councilor Sherwood asked if it was usual to have a proposal where there is one or two lots separated by some distance from other lots. Mr. Duenas responded the sewer line runs along the creek at the rear of the property instead of in the front of the property, and this proposed Sanitary Sewer District is trying to pick up the lots that are not hooked up.

- f. Mayor Dirksen closed the Public Hearing.
- g. Council Consideration: Resolution No. 04-91.

Upon motion of Councilor Wilson, seconded by Councilor Sherwood, to approve RESOLUTION 04-91 – A RESOLUTION ESTABLISHING SANITARY SEWER REIMBURSEMENT DISTRICT NO. 33 (SW WALNUT STREET).

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes
Councilor Woodruff	-	Yes

9. PUBLIC HEARING – REVISED PARKS SYSTEM DEVELOPMENT CHARGE METHODOLOGY AND RATES

- a. Mayor Dirksen opened the Public Hearing.
- b. Dennis Koellermeier, Public Works Director, introduced Don Ganer, consultant, who worked with staff on this project. He noted Council had received a letter from Ernie Platt of the Home Builders Association (Agenda Item No. 9, Exhibit #1) and then distributed copies of a faxed memo from Ed Sullivan that was received this afternoon (Agenda Item No. 9, Exhibit #2, copies of which are filed with the City Recorder). He then presented his staff report, explaining the current methodology needed to be updated in order to comply with state law adopted in 2003. The proposed revision updates the methodology as well as increases the rates as of January 1, 2005. Council received a briefing on the proposal on September 21. At that time, Council authorized staff to release the draft of the SDC methodology and to begin the process for holding this hearing. He noted Mr. Ganer and staff met with the chair of the Home Builders Board to address their concerns. One of the issues raised by the Home Builders resulted in a proposed change, which has been included in the agenda packet. Staff will be asking for Council's direction on that proposed change. One issue staff will be addressing during this hearing is the amount of green space included in the plan. Staff studied the issue and does not recommend any change based on the fact that City residents have consistently indicated a desire to increase green spaces in the City. In addition,

staff concluded that Oregon law allows appropriate credits against SDC's for donation of green ways made by developers. The new rates to be adopted by Council will generate approximately \$5.5 million in additional SDC fees over the next five years. The fee increase would not be applicable in the Bull Mountain area. If approval had been given on the Bull Mountain area annexation, an additional \$5 million would have been collected over a five-year period. If Council approves the SDC methodology and rates, SDC fees will increase from \$1,852 to \$3,893 for a single-family residence, or \$3,753 if Council accepts the adjustment that was suggested tonight.

Mr. Koellermeier explained the process suggested is to conduct the public hearing, consider the Home Builder's request, and then direct staff to prepare the necessary resolutions that will be brought back to the December 14 Council meeting.

c. Public Testimony

Mr. Monahan suggested that staff comment about concerns addressed in Mr. Sullivan's letter.

Don Ganer, Don Ganer Consultant, stated Mr. Sullivan in his letter is basically talking about property the owner is voluntarily consenting to be annexed, and if that occurs, the proposed development could be annexed. Mr. Sullivan's concerns include:

- Developer's plans had been developed based on the premise they would not be paying SDC's, and now if they are required to pay SDC's which would not be fair.
- There are a lot of green spaces developers are required to set aside as a condition of approval. Developers would request credit against the SDC for the green space if they were required to pay SDC's. There is a possibility the City could do that, if the green space areas are donated to the city. If the property that is being talked about is not going to be developed or is not being donated as public property, then it is not appropriate to give SDC credit.
- The final issue was there was an adjustment in the proposed SDC methodology to account for tree mitigation. If the tree mitigation costs were considered, the development costs for parks could be reduced by \$10,000 an acre. That has been factored out. The developer did not believe that was sufficient, and believes that should be more.

Councilor Woodruff asked when approval for the development was given. Mr. Koellermeier responded he was not sure, but believes it was several weeks ago.

Councilor Woodruff asked if this was an area that would have been annexed as part of the Bull Mountain annexation, which has been talked about for well over a year. Mr. Koellermeier responded that was part of the Bull Mountain area proposed for annexation. Councilor Woodruff noted it seems a little strange the owners were not aware of the City's SDC's and development requirements since the City has been talking about the Bull Mountain Annexation plan for well over a year.

Councilor Wilson asked if SDC's are collected at the time the Building Permit is issued. If this is a voluntary annexation, then he did not see this should be exempt.

Mr. Ganer explained their contention is that they should not have to pay the SDC's. Normally whatever is in place at the time the building permit is issued is what they have to pay. Until they pull a building permit, no money has been expended on construction. It is assumed they can make adjustments in their price.

Mr. Koellermeier noted one concern expressed was if Council approved an increase in SDC rates on a Tuesday night and the rates were to go into effect the next morning. What Council is proposing is a lag time for the rate to go into effect until January 1, 2005. There is an opportunity for someone to pick up a permit before the end of December and avoid paying the increased SDC's.

Mr. Ramis asked staff to restate the comment about the SDC credit, because Mr. Sullivan's letter characterizes the city's position as "refusing to authorize SDC's credits when the developer provides passive recreation areas to the residents of this development and the community as a whole."

Mr. Ganer responded the point he was making earlier is if the developer donates that property and makes it a public property owned by the city, then it is eligible for credit. What Mr. Sullivan refers to in his letter is a situation where they provide some things but it is not really public, it is privately owned. Unless something is available to the public and publicly owned, it is not eligible for SDC credit.

Mr. Ramis noted the letter states, "...provides passive recreation areas to the residents of the development and to the community as a whole." He asked if that required dedication of land to the public.



Mr. Ganer responded if they are stating this is a dedication to the public, then it would be eligible. If what they are saying is some developments will provide things like privately owned trails or other types of facilities that are owned by the subdivision or a community association, but they are not available to the general public use, it is not covered.

Mr. Ramis asked if it was a dedication that allows public use, it would be eligible for consideration for credit, but it is in private, it doesn't. Mr. Ganer stated that was correct.

Ernie Platt, Home Builders Association, 15555 SW Bangy Road, Lake Oswego, stated the Home Builders Association (HBA) did receive early notification of the proposed change of methodology, and did spend a couple of hours with several members of the City staff and the City's consultant, as well as several HBA members. The HBA thoroughly reviewed the proposal and had four questions, which were outlined in their November 15 letter (See Exhibit 1). The first two items have been sorted out and City staff commented those issues have been addressed. The third and fourth points raised in his letter relates to the quantity of green space. Unfortunately in the City's master planning, there is no standard for a level of service and almost anything can be done. He feels the quantity of green space proposed by the City is really beyond the norm. He reviewed the National Recreation and Park Association website on the internet to see what kind of suggested levels of service they might suggest for various classifications of park and parks uses, which is not binding on anybody. Their recommendation for green spaces was in a range of  $\frac{3}{4}$  to 1 acre for thousand population. The City's plan specifies  $3\frac{3}{4}$  acres per thousand, four times the National standard number. In his opinion, the City's proposal is excessive. At that number, the overall level of service equates to 6.55 acres per thousand,  $3\frac{1}{4}$  that is your green space. It is approximately half of your park system, by land area.

Councilor Woodruff stated he talked with Mr. Platt yesterday and explained the City is catching up on parks and green spaces. The parks that are located in Tigard per thousand residents continue to be less than the number of acres per thousand than some of the surrounding cities. While it may seem to be excessive, the City is trying to catch up and develop more space that was not developed earlier.

Mr. Platt said he had two comments relating to that. The standards by the National Recreation and Park Association for cities the general size of Tigard is between 6 and 10 acres per thousand population. Tigard is projecting 6.55 acres, so Tigard is right in the range. As to comparing Tigard to other cities, he does not buy that argument. Every city and every park district prepares

their own master plan, prepares their own associated capital improvement plan that goes with that, and what one city or one park district does in relationship to what another city or park district does, does not make sense because Tigard is not bound by what others do and they are not bound by what Tigard does.

Councilor Woodruff noted Council is bound by what its citizens want. Tigard citizens have stated there are not enough parks.

Mr. Platt stated he was addressing green spaces, not the overall number of park areas.

Mayor Dirksen stated Mr. Platt is not really challenging the overall total acreage the City is considering, but what it sounds like is a concern from his letter is the proportion of green spaces vs. developed parks. Mr. Platt stated that was correct.

Mayor Dirksen said his first thought was if the City were to change that ratio and go to a higher ratio of developed parks, the development costs for those parks would go up and would probably lead to an increase in the SDC's to produce those.

Mr. Platt agreed that might be possible. He would have to review the numbers and the consultant would have to re-crunch the numbers. The other issue he wanted to discuss is the magnitude of this proposal and the timing. The suggested SDC for single-family residents as amended is \$3,753, and currently the fee is \$1,873 now. This amounts to over a 100% increase. The Council has the authority to do this, as the city is the sole provider for building permits. He does not know anyone in a competitive market that provides goods and services that can pull off a 100% increase in a price of a commodity or service. He did not know the direction Council will give staff, but he would suggest that if that is to be the number, but if Council decides to implement the increase, then Council consider phasing the increase in over a two-year period to accomplish, increasing it by 1/3 in 2005, another 1/3 in 2006, and to the total increase in 2007. A minimum would be 1/2 in 2005 and the full increase in 2006. He said this proposed increase is catching people right on the fence who have made plans, made commitments, gotten loans, sold houses, on a presale basis, and the price of a house just went up \$2,000. You are asking them to pay \$2,000 more for that building permit on January 2, then what they would pay on December 30. If they do not have the means to collect that in the price of a house, you are really picking their pocket. That is his recommendation, and if Tigard has to do it, he asked that the increase be phased in.

- d. Mayor Dirksen closed the public hearing, as there was no one else indicating they would like to testify.
- e. Council Direction

Councilor Wilson asked how long ago was the last increase. Parks Manager Dan Plaza responded it was January 1, 2004. There was a formula in place that automatically increased the SDC by a small percentage January 1, 2004.

Councilor Woodruff asked when the last time the SDC's were really examined like this was.

Councilor Wilson noted his answer to Mr. Platt would be there have been huge increases, particularly in land costs. Not to long ago, property could be purchased for \$100,000 to \$200,000 an acre and the price is pushing \$500,000 now. He is curious what the history of the Park SDC has been. By the time you add the Park SDC, the streets, and water, what is the total cost of fees. It probably is close to \$10,000 in fees, but on the other hand, if it cost \$400,000 to build a house, this amount probably would be close to what it has always been.

Councilor Sherwood said she was thinking about this as well and how these fees impacts affordable housing. One thing that drives up the cost is all these fees. The last report for the City of Beaverton is that for house costing \$140,000, there is \$20,000 in fees. Affordable housing is needed but yet the fees are being increased. She is not saying that is bad, because every time the City has gone out to buy park land, they have gotten into bidding wars with developers, and the City loses because the City is not able to buy affordable park land.

Mayor Dirksen noted that if you look at the level of fees, instead of looking at the price or cost that the fees add to the house, you need to look at the fee as being a measure of the impact the new house will have on the city, for traffic or parks, or whatever. Once that house is built and that one-time fee is paid, the impact of that house is there forever. That is the only time it is collected. He believes Council is all in agreement about that. When Council talked about the draft methodology back in September, Council recognized that Park SDC has not kept pace with the actual cost incurred and trying to create parks. That is what Council is trying to address with this proposal.

Mr. Plaza noted in response to Councilor Wilson's question, the last time the SDC's were increased by resolution was April 2001. The cost per acre at that time was \$7,700 an acre. He recalled that fact was one of the reasons that

drove the staff to take another look at this. At \$7,700 an acre, staff knew something needed to be done.

Mayor Dirksen asked if land prices have really gone from \$7,700 an acre to over \$300,000 an acre.

Mr. Ganer said he didn't know if it had gone up that much, but that was the number that was used in the 2001 calculations. The figure of \$7,700 an acre was probably low.

Mr. Plaza stated when staff started doing the Bull Mountain analysis several years ago, he recalled checking the price of property, which was \$125,000 an acre. After a short time went by, he checked back and the price was between \$225,000 and \$275,000 an acre. The last time he checked, the price was over \$300,000 an acre. That is how fast land cost has climbed during the past two to 2-1/2 years since the City has been working on the Bull Mountain project.

Mayor Dirksen noted one issue that was mentioned is there is a development that is in process and others are near the end, where development is taking place under the assumption that the Parks SDC was not going to be increased or there would be a small percentage increase. The developments are at the point now where they are actually going to coming in for building permits, because the infrastructure is basically complete and soon construction of houses will commence. There could arguably an unanticipated impact on the development, if there are any at that stage. He asked Mr. Koellermeier if he knew about this.

Mr. Koellermeier stated developments are in almost every stage of completion. If one is nearing completion, another one is just starting. At any one point in time, it would be hard to say where each development is. Another aspect to add to that discussion, historically SDC's have been paid at the time the building permit is issued. There has been discussion if we should do it differently, possibly at the subdivider level. Staff is not proposing that. It seems the best time to collect SDC's is at the time the building permit is issued because there is still an opportunity for the builder to make adjustments in the home and price. While a little sympathetic, you have to start somewhere and whatever date is selected, there will be problems for someone.

Councilor Moore stated he did not believe builders are going to absorb this increase, because residents are going to use parks and green spaces. Our citizens are screaming they need more parks and green spaces. Anything that

is worthwhile will be added to the purchase price, and parks can then be developed.

Councilor Woodruff said Council is sympathetic to the homebuyer and there are goals for affordable housing. This decision is going to impact that decision. The Vision Task Force has talked a lot about growth. One suggestion had to do with increasing SDC's fees as a way to provide some incentive for development not to have so many units on property, which is what some people would like to have, with less density. He is in favor of moving forward for Council to take action on December 14, and maybe more information will come in between now and then for Council's review.

Mayor Dirksen stated he has not seen anything to change the direction Council gave staff earlier.

Councilor Moore stated what he recalled seeing in the study in September was a comparison of what other cities charge. Tigard is not at the top of the scale. He feels the proposal is reasonable in comparison with other cities.

Mr. Ganer stated of the SDC rates in Washington County cities, the highest single family rate is Sherwood at \$5,618, Tualatin Hills Park District, is currently \$2,533 and they are scheduled an increase based on inflation to \$2,750 January 1; Tualatin is currently at \$2,100 and will increase to \$3,150 in January 2005, which was phased in at the request of the Home Builders; North Plains is at \$2,144, but they are in the process of updating their methodology. West Linn in Clackamas County is the highest in the State at \$8,200, but their fee is still facing a court challenge.

Mayor Dirksen asked if there is consensus on the direction to give staff to move forward.

Mr. Koellermeier stated one clarifying point needed from Council is, does Council want the resolution prepared with the adjustment staff suggested which would reduce the rates.

Mayor Dirksen stated the recommendation was based on what staff did.

Mr. Koellermeier stated the change would be in response to the Home Builders Association. Staff worked with the Home Builders Association and thought there was some validity to their request. This was stated in a staff memo.

Mayor Dirksen asked what the recommended rates would be.

Mr. Koellermeier responded the revised rate recommendation would be:

- Single Family Home, \$3,753
- Multi-Family, \$3,017
- Manufactured Housing, \$2,976
- Commercial per Employee, \$255 per employee.

Councilor Sherwood asked staff if they were recommending a phase in of the rates. Mr. Koellermeier responded they were not recommending a phase in, although the Council could decide to approve a phase in of the increased SDC's.

Councilor Wilson stated he was sympathetic to the argument presented, but people commit to loans just prior to construction. Most builders, unless they build spec houses, build houses when they have a buyer. If the price of lumber jumps up or other commodities, they just make adjustment for that. That is part of the risk of building a home.

Mayor Dirksen noted that when Council approved a phase in of taxes for the annexed area, it was for a consideration for the people who were living there, and it would be an increase over a long period of time, where as this is a one time thing, and it is always brand new. He asked staff if they felt they had direction from Council on what to do.

Mr. Koellermeier stated yes, they would prepare necessary resolutions for consideration on December 14.

## 10. COMPREHENSIVE PLAN UPDATE PROCESS DISCUSSION

- Staff Report: Barbara Shields, Long Range Planning Manager

Barbara Shields, Long Range Planning Manager, noted the critical piece is the chart, which outlines the timeline proposed for the comprehensive plan update, which will take three years, which is based on the Planning Commission's recommendations. The Planning Commission is requesting a joint meeting with the City Council to address the scope of work as well as other workload issues. The staff report listed a number of issues identified by the Planning Commission.

- Study Area – Should the unincorporated Bull Mountain area be included in the study area.

- Public Involvement process – What should the extent of the public involvement be? Should the Council establish another task force to guide the comprehensive plan update process?
- Priority Issue – What are the Council's priorities regarding the long range planning projects.

Mr. Monahan explained staff is looking for feedback on the Planning Commission's recommendations, because the comprehensive plan update process will be a very extensive process. The City has worked with the Committee for Citizen's Involvement (CCI), which could assist in this process, or would Council prefer creating another totally separate committee, which might be a blend of the Planning Commission and the CCI to oversee this process. The feedback the staff would like at this time includes:

- Is staff on the right track;
- Does Council have any concerns about the proposed timeline;
- Is Council concerned about the process; and
- Does Council want to meet with the Planning Commission to discuss their recommendations and to make sure everyone is thinking the same way and how to proceed.

Councilor Wilson said he has strong feelings about the comprehensive planning project. The staff and Council just went through a very controversial year, which was very taxing and was an extensive use of city resources and Council's time. He concurs the comprehensive plan needs to be updated soon, but he is concerned that effort not jeopardize the work on the Downtown Plan, as it is a big project by itself. He feels the comprehensive plan update needs to take a back seat to the Downtown Plan at this time. In addition, a major tool for planning was just lost as a result of the passage of Ballot Measure 37. He believes there needs to be a delay of at least six months to a year of the comprehensive plan update before staff, the Planning Commission and Council knows what tools are available. He felt to move forward now would be futile.

Councilor Sherwood noted she concurred with Councilor Wilson that the Downtown Plan needed to be the focus at this time, especially since cutbacks were made to long range planning area. She appreciated all the staff has been able to do during the past year. It might be possible to do some preliminary work on the comprehensive plan. She felt it would be a good idea for Council to meet with the Planning Commission.

Councilor Woodruff stated he supported having a joint meeting with the Planning Commission to talk about this and to hear directly what they have to

say about the update process as well as the Council's proposal to delay work on the comprehensive plan.

Mayor Dirksen stated he appreciated all the comments. He noted Councilor Wilson prefaced his remarks that the comprehensive plan needs to be updated soon, but "soon" is a relative term. This is certainly not something the City wants to rush into or do as quickly as possible. There is certain urgency to updating the comprehensive plan because of the consequences of allowing development to continue under an outdated comprehensive plan. He would not want to see the efforts of the Downtown Plan to stop or to update the comprehensive plan in a hurry. Even if the comprehensive plan process were to begin, it will not happen very quickly. Some preliminary steps could still take place as it would take months before any recommendations for changes are made. He noted the first couple of steps involve development of a public participation program and then to create a background report. If there is a citizen task force involved, it would take a period of time for them to review the volumes of documents in order to become familiar with the existing planning documents before the process could move forward.

Councilor Sherwood noted the concern she has is the amount of staff time it would take to create the preliminary background reports, because basically the same staff that are working on the Downtown Plan are also working on the comprehensive plan background reports.

Mr. Monahan pointed out at this time, staff does not know what the impacts will be from Measure 37 or the number of claims that will be filed, and those claims will be processed by the long range planning staff. He feels Council's consensus is that there is not a need to rush on the comprehensive plan update, and to schedule a joint meeting with the Planning Commission probably after the first of the year. He asked for Council comments on the timetable proposed by Ms. Shields, which is proposed to be a three-year process. Other concerns are: does this meet Council's expectations, is this too long of a process, too short, or about right. If Council decides not to start the process now, comments can wait until Council meets with the Planning Commission. He noted that both Council and the community have commented in the past that the comprehensive plan review process was going to be started after the first of the year, which was why staff has put so much effort in getting to this point. If the decision is to delay, then staff will put their efforts into other activities until Council wants to begin working on the update.



Councilor Woodruff stated Council had answered staff's fourth question and the first three are important but was not sure if direction can be given at this time.

Councilor Sherwood stated she would not be in favor of including the unincorporated Bull Mountain area in the City's comprehensive plan update unless Washington County was willing to pay the City to do that work. She did not feel Tigard should use its money to address planning issues for that area. She would not want to include the unincorporated area after the voters' resoundly rejected the annexation proposal.

Mr. Monahan recapped the Council's discussion as follows:

- Task 1 - Study Area - Staff will initiate discussion with Washington County to determine if they would be willing to contribute funds to the City of Tigard for including the unincorporated Bull Mountain area as well as other Urban Growth Boundary areas in the updating the comprehensive plan. When he reports back to Council on that discussion, Council can determine the total study area.
- Task 2 - Citizen Participation – No direction at this time, but Council wants to talk to the Planning Commission to see if they want to take this on, or partially involve the members of the Planning Commission in a different task force.
- Task 3 – Public Participation – There is time for discussion on whether to get the CCI up and running again.
- Task 4 – Priorization of Long Range Planning Projects – It sounded like for the foreseeable future, the Downtown Plan will be the focal point of the Long Range Planning staff. Council wants to discuss how the comprehensive plan update fits into that process. If Council decides at a later date to focus on the comprehensive plan update, there is a timeline chart prepared that can be updated.

Councilor Woodruff stated the staff is already working on the Downtown Plan. In addition, he wants to see what the impacts will be of Measure 37 before moving ahead too much.

Councilor Wilson noted the TGM grant for the Downtown Plan ends in June, but the project will not be complete at that time. It will probably require an urban renewal district, which will involve a lot of effort and take several years to complete.

Mayor Dirksen acknowledged the principles of the Downtown Plan, but asked Council not to halt the comprehensive plan update process. He did not feel the preparation of the background documents would take that much time.

The TGM grant will be completed in June after when the plan is presented and approved. He would like the Comprehensive plan process to proceed as well.

Councilor Woodruff noted he heard a lot of comments during the election process from citizens that they wanted the City to move ahead with the comprehensive plan update.

Ms. Shields stated staff will create some preliminary elements of the public involvement plan and Council will meet with the Planning Commission. She will report the Council's concerns to the Planning Commission.

Mr. Monahan noted Council had committed the January workshop meeting to Council Goal Setting, so February's workshop meeting would be the logical date for the joint meeting to occur.

11. PUBLIC HEARING – CONSIDERATION OF AN ORDINANCE PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE #37, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE.

- a. Mayor Dirksen opened the public hearing.
- b. Staff Report.

Mr. Ramis referred to the revised ordinance that he had prepared (Agenda Item No. 11, Exhibit #1) that would establish the process for people to make claims under Measure 37. Measure 37 changed the land use framework in the State and provides in circumstances where property values have been devalued by the effects of regulation, a property owner may apply for compensation. Under the measure, the Council is charged with deciding who will decide on the claims, may award compensation, or may determine to waive the land use regulations and allow development. The measure goes into effect December 2. The ordinance sets up a procedure to process claims, and provides information to the public on how to file a claim.

Mr. Ramis indicated the ordinance provides general authorization for the procedure and Exhibit A outlines the specific procedures. It is recommended Council adopt the Ordinance, as well as carefully consider the various provisions of Exhibit A. There are three areas staff requests guidance from Council.

- Whether to charge a fee for filing a claim; and if so, how much. Should it be a straight fee or a deposit where the time staff spends on the claim is

charged against? Will the fee be imposed if it is decided the application is valid, or will the fee be waived in those instances?

- What evidence does Council feel should be submitted relating to value? Would you expect to see an opinion offered at one of the spectrum, or would you expect to see a formal appraisal at the other end of the spectrum, or something in the middle? Would a less formal market analysis be sufficient?
- What information will be required to be submitted as part of the application? Page 2 of Exhibit A includes a list of various items that states appellants are encouraged to be included, but Council may want to make some or all of those items to be mandatory.

c. Public Testimony

Gretchen Buehner, 13249 SW 136<sup>th</sup> Place, Tigard, stated she was opposed to Measure 37 and feels it will create a big mess. She is concerned about what the Legislature is going to have to do to this measure beginning in January. Regarding the procedure the City is proposing to adopt to process claims, she feels the more detail that can be required as part of an application, the better results the City will have if it ever has to defend the record at an appellate level. She would strongly urge requiring a formal appraisal as part of the application. The IRS requires an appraisal if there is any question of value, and that analogy should easily be carried over to this situation. Basically her advice would be to get as much information as possible in order to develop a very detailed record.

Councilor Sherwood noted the Council met with three legislators last week at the Joint Meeting with Tualatin City Council and the Tigard/Tualatin School District Board and we were told there is little the Legislature will do to the Measure, other than possibly a few tweaks. Basically, they indicated implementation of this Measure is up to the local governments.

Ms. Buehner stated the reason she recommends requiring as much information as possible with the application is what will occur if a decision is challenged to an appellate court. The city will be in a much stronger position if it has a very detailed record at the local level.

d. Staff Recommendation

Mr. Ramis stated the staff's recommendation is for Council to adopt the ordinance and provide direction with respect to the features to be in Exhibit A.

e. Council Discussion

Councilor Moore noted Mr. Ramis touched on a number of issues that Council has questions about, including covering the cost to process claims, should this be fee neutral, is it a fee or a deposit to cover the cost to process claims, should Council require a market analysis or a formal appraisal. Regarding Section B on page two of Exhibit A, instead of "encouraging" the five items to be submitted, should those items be "required" to be submitted. If they are required, but unable to be provided, require that a statement be submitted to explain why that item cannot be provided.

Councilor Woodruff stated Council talked about balancing the needs of the staff and the applicants, and he did not want this so burdensome that it looks like the property owners/claimants are being punished if they file a claim under this new law. At the same time, we want to make sure enough information is provided, that the applicant has done some homework on the analysis of their claim, that sufficient information is provided to identify the issue and reasons why they feel their property was devalued before they submit their application. He concurred with Councilor Moore about making the statements under Section B on page 2 of the exhibit to be mandatory, as well as having a fee that would cover the actual costs of processing an application.

Councilor Moore stated he did not know what a fair fee would be, but he thought staff's time should be covered by a fee. He did not want other taxpayers to assume the cost burden of someone who is filing to be compensated. He did not know how much time staff would be required to spend on each application but the fee should be enough to cover the cost. Possibly there should be a deposit required that costs are charged against, and any unused portion of the deposit would be refunded to the appellant at the end of the process for that application.

Councilor Sherwood asked if the deposit would be refunded if it were found there is a legitimate claim.

Councilor Moore responded the city should be able to recover its cost to investigate, regardless of if it is a legitimate claim or not. He would propose a fee of \$1,000. If the cost \$500 to investigate the claim, the other \$500 would be refunded. He asked how hard would this be to administer.

Councilor Wilson asked if the fee would be refunded if the claim is not legitimate.

Mr. Ramis stated there is not a precise answer to that based on the language in the Ballot Measure. A successful applicant that the procedure itself will impose an additional restriction on the use and therefore should be compensated for the cost of processing the application could make an argument. That will be an issue that probably will be subject to a court challenge.

Councilor Moore asked if language could be included that the fee would be required to be paid at the time of submitting an application, and that all or part of the fee would be refundable, based on the final decision.

Mr. Ramis concurred that language could be written to address that concern.

Councilor Moore stated he would prefer that rather than calling it a filing fee, the money paid would be a "deposit."

Mr. Ramis stated he felt staff's concern is that a consistent procedure be established on the way applications are treated, and it would be helpful to know up front how the claims were being treated that is proven to be valid, when it comes to payment.

Councilor Sherwood concurred that there should be a deposit, even by those who have a legitimate claim. She felt having a deposit would keep those who thought they would submit a claim just to test the system from filing an application. She felt that people who have a legitimate claim would complete the application, provide the required information, and pay the deposit, before staff has to go through the entire process to find there was no decrease of value.

Councilor Moore stated he preferred requiring a deposit, which would pay the cost of processing a claim, and if found to be valid, then possibly refund the entire amount of the deposit, not just the cost to process the claim. He did not want taxpayer money to benefit someone who did not have a valid claim.

Councilor Wilson noted that Ms. Buehner's comment about market analysis was one he had not thought about. He has been thinking about what happens if there is insufficient information provided on a proposed claim, and if there is a process to go back and ask for additional information.

Mr. Ramis said he feels that during a hearing process, it would be fair to tell an applicant/claimant that their information was inadequate, and give them time to get that information. However, there is a time limitation to process claims. It is necessary that claims be processed expeditiously, but it would be better if City can give notice to prospective appellants what information is required.

Councilor Wilson agreed that an appraisal would certainly be better than a market analysis. What happens if an appraisal is submitted, but the City disagreed with the findings. Can the City have its own appraisal conducted. Would the City have an appraisal conducted automatically on every application.

Mr. Ramis responded there would be situations where staff feels an appraisal would absolutely be needed because it is obvious there has been a substantial diminution of value because of regulation, and other times when an appraisal clearly would not be needed. There are going to be a certain number of cases that an appraisal will be necessary, especially in close cases where it will be necessary for both sides to have the best information available to support its case.

Mayor Dirksen suggested that in paragraph B-3, perhaps a minimum of a market analysis would be required, but leave it up to the claimant whether they feel it was necessary to have a full appraisal conducted.

Councilor Moore asked what the difference in cost between a market analysis and an appraisal.

Councilor Wilson responded that a realtor could probably provide a market analysis for free on residential property, whereas an appraisal would cost about \$500 for residential property. Appraisal for commercial property would be higher.

Councilor Moore stated he felt it should be left up to the claimant to decide whether to just have a market analysis or a full appraisal. In situations where value is questionable, claimants would probably have a full appraisal completed.

Councilor Wilson asked what the difference is between a market analysis and an appraisal. Ms. Buehner explained when developers' look at property, both as a buyer or seller, the client gives an appraiser a list of criteria to look at. An example might be, what is the current zoning, what the proposed use might be, and what would the property valued at under that scenario. This is done all the time. An appraisal is based on certain criteria or variables. An appraisal for commercial property will cost between \$1,500 and \$2,000, and the cost for an appraisal on residential property is about \$400.

Councilor Woodruff said that if he were an applicant, he would bring in the most compelling evidence he could to support his case, and would probably have an appraisal done as part of the evidence, to prove diminution of value.

Councilor Moore requested that the wording in Section B on Page 2 of Exhibit A be changed from "recommend" to "requiring," so that if people are really serious about their claim, they are providing the best information they can.

Councilor Sherwood stated that if this information is not required, then she felt claims would be submitted even if they do not have a substantiated claim.

Councilor Woodruff said he felt the serious claimant who believe they have a legitimate claim, will provide that information, but this may discourage those who does not have a valid claim from filing. Some might just be throwing in a claim to see what sticks to the wall.

Councilor Sherwood concurred minimum requirements for information that is needed to be submitted to show it is a legitimate claim. That would definitely be to their benefit, and would possibly discourage frivolous claims from being submitted.

Councilor Wilson asked what the process will be if they do not like the City's decision.

Mr. Ramis stated appeals would be filed at the Circuit Court level.

Councilor Wilson asked if only the evidence submitted to the City can be considered by the Circuit Court, or can new evidence be submitted.

Mr. Ramis responded he did not know what an appeal to the Circuit Court would be like. His guess would be that creative advocates on both sides would try to find ways to bring in additional evidence on appeal. Even if an appraisal was not submitted to the City to review, he thought an appraisal would definitely be submitted to a judge on appeal.

Councilor Wilson asked what the City's liability would be if the City lost an appeal at the Circuit Court level. Will the City be required to pay court costs as well as other damages.

Mr. Ramis stated that was probably correct. The Measure, although styled as a compensation matter, is probably more realistically a waiver measure. There isn't a lot of money around to pay claims, so the real issue will probably be

whether to waive the land use requirements and allow whatever the landowner had requested.

Mayor Dirksen stated that in many instances, what the person is after is not financial compensation, but a variance in order to be able to develop their property.

Mr. Ramis stated language was included in Section B, the recommended items, which Council wants to change to required, which states, "a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation." This was included to put the burden on the claimant to tell the City what precisely do they want changed to order to avoid the cost.

Councilor Sherwood noted under B-3, there is a statement regarding requiring a minimum of a market analysis. She asked if that needed to be changed to recommended appraisal.

Mayor Dirksen suggested leaving it as market analysis, and letting the claimant to think that up on their own. He also felt there was concurrence by Council to take out the sentence as part of B, and add items 1 through 5 to A, under items required to be submitted.

Councilor Moore asked which body would be hearing these cases. Mayor Dirksen asked if that decision needed to be made tonight.

Councilor Moore said he thought the Council should initially be the "decision maker." He felt if Council were involved in this at least in the beginning, it would give Council a better understanding of what is involved, rather than just setting the policies. He did not feel that it needed to be stated in the ordinance itself.

Mr. Ramis stated the ordinance as written would allow Council to be the decision maker initially. That process could be changed later.

Councilor Sherwood noted that Exhibit A refers to both "demand" and "claim." She suggested that the word "demand" be changed to "claim" through the exhibit. Council concurred with that recommendation.

The Council concurred to set the deposit at \$1,000, with staff costs charged against the deposit.



Mayor Dirksen asked what happens when property values are lowered even if there was no plan for development. He gave a hypothetical situation where someone owns 10 acres, which would be developable if a regulation did not exist, but because there is a regulation, a person cannot develop the property. However, that person really has no plan to develop, but the value was reduced. He asked if that person would have a valid claim.

Mr. Ramis replied that if someone comes in and it is determined the owner had a valid claim that they were not able to develop and that is accepted, the owner could choose to exercise that waiver or not. The City would not have any control over what they did.

Councilor Woodruff noted he felt there was Council agreement on the ordinance, but some tweaking still needs to be made to the Exhibit. Could the ordinance be approved and the exhibit brought back at the next Council meeting.

Mr. Monahan noted Council intends to adopt the Ordinance without Exhibit A, and then recapped the discussion as follows:

- Mr. Ramis would continue working with staff to modify Exhibit A to be adopted by Council on December 14.
- The other direction to staff would be that if anyone comes in between December 2 and December 14, we do not know what the fee will be, who the decision maker body will be as those issues would be sorted out, but they would be notified as soon as we know the answer.
- Mr. Ramis was directed to modify Exhibit A as discussed.

Council concurred with that synopsis.

Mr. Ramis stated even though the ordinance refers to Exhibit A, Council's action would not include Exhibit A. Exhibit A will be brought back to Council on December 14 for adoption.

- f. Close Public Hearing
- g. Council Consideration: Ordinance No. 04 – 12.

Upon Motion of Commissioner Woodruff, second by Councilor Sherwood, to adopt ORDINANCE NO. 04-12, AN ORDINANCE PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE, AND

DECLARING AN EMERGENCY. It was noted that Exhibit A was not included with the ordinance.

The motion was approved by a unanimous vote:

Mayor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes
Councilor Woodruff	-	Yes

12. COUNCIL LIAISON REPORTS - none


13. NON AGENDA ITEMS - none

14. ADJOURNMENT

Upon motion of Councilor Woodruff, seconded by Councilor Wilson, and unanimously carried, the meeting was adjourned at 10:06 p.m.

  
Jane McGarvin, Deputy City Recorder

Attest:

  
Mayor, City of Tigard

Date: 1.11.05